

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

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VIDEOTAPE DEPOSITION OF THOMAS MARANO

New York, New York

November 12, 2012

9:56 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27645

November 12, 2012

9:56 a.m.

Deposition of THOMAS MARANO,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

1 THOMAS MARANO

2 negotiation, I didn't ask him, you know,
3 for this specific number. So I can't -- I
4 just don't know.

5 Q. I thought you testified a minute
6 ago that you always asked him for more.

7 Are you saying just generally?

8 A. Whenever I negotiated anything
9 with Michael, I always asked for more.

10 Q. Okay. So are you saying that
11 you never had occasion to discuss with
12 Mr. Carpenter the amount that AFI was
13 willing to pay or that you thought should
14 be paid by AFI to ResCap to settle claims?

15 A. Not in the context of
16 negotiating the deal. But I had expressed
17 numbers that I felt were, you know, higher
18 than we were able to get.

19 Q. What numbers did you express?

20 A. Now, my general view was it
21 probably would take something close to
22 \$2 billion to settle this.

23 Q. And you expressed that to
24 Mr. Carpenter?

25 A. I expressed that to

1 THOMAS MARANO

2 Mr. Carpenter, definitely.

3 Q. Did you express it to other
4 members of the ResCap board?

5 A. Yes.

6 Q. Did you express it to all of the
7 other members of the ResCap board?

8 A. I was fairly vocal in what I
9 thought it would take to get a deal done.
10 My view is it would take a couple billion
11 dollars, that no one was going to do a
12 deal for 750.

13 Q. And during what period of time
14 or over what period of time did you
15 advocate for a number in the range of
16 \$2 billion from AFI?

17 A. I wouldn't use the phrase
18 "advocate." I would say expressed my view
19 of how to get a settlement --

20 Q. Fine.

21 A. -- or, pardon me, a deal. And
22 in that context, I would say, you know,
23 over the spring of this year.

24 MR. KAUFMAN: Let's mark as the
25 next exhibit, Ally Financial, Inc.'s

1 THOMAS MARANO

2 Elliott Management?

3 A. Yes.

4 Q. And Mr. Cederholm's e-mail
5 summarized a telephone conversation he had
6 with you regarding the statute of
7 limitations defenses to put-back claims,
8 correct?

9 A. Yes.

10 Q. Mr. Cederholm pointed out,
11 didn't he, that put-back claims are based
12 on alleged breaches of contract and that
13 if the claimed breach is in the reps and
14 warranties made in the contract the
15 claimant must assert the breach within the
16 applicable limitations period?

17 A. What was the question?

18 MR. KAUFMAN: Read it back,
19 please.

20 (Record read.)

21 A. That is what he asserts in this
22 e-mail and it is generally what he
23 discussed on the telephone, yes.

24 Q. And did you understand from what
25 Mr. Cederholm was telling you that

1 THOMAS MARANO

2 applying a six-year statute of limitations
3 that exists in New York, that should in
4 2012 bar any put-back claims based on
5 contracts made before 2006?

6 MR. PRINCI: Objection as to
7 form.

8 A. I understood his position and I
9 understood what his opinion was but he was
10 not counsel and I'm not even sure if he's
11 a lawyer. He's just a guy who bought
12 bonds who is trying to make an argument
13 for what the bonds were worth. I relied
14 on counsel.

15 Q. I wasn't asking what you relied
16 or even if you relied on it. I just
17 wanted to know when you received the
18 e-mail and read it you understood that's
19 what he was saying?

20 A. I understood that's what his
21 assertion was.

22 Q. Okay. So did you understand
23 from what he was telling you, at least
24 from his view, that in light of the
25 statute of limitations there should be

1 THOMAS MARANO

2 zero put-back liability for PLS deals done
3 in 2004 and 2005?

4 MR. PRINCI: Objection as to
5 form.

6 A. Again, that was his opinion.
7 The reason why I copied, as you can see,
8 the attorneys on the top here was I was
9 interested in their opinion.

10 Q. Did any of those to whom you
11 sent Mr. Cederholm's e-mail ever get back
12 to you and express a view as to what he
13 said to you?

14 A. I do believe there was
15 discussion with Tim Devine on this matter
16 and probably Tammy as well. And my
17 recollection of the discussion was he --

18 MR. PRINCI: No, don't.

19 THE WITNESS: Oh, counsel. I'm
20 sorry.

21 Q. Shifting gears. Mr. Marano, you
22 knew that the settlement being negotiated
23 with Kathy Patrick and Talcott Franklin
24 was contingent on their signing plan
25 support agreements with ResCap, didn't

1 THOMAS MARANO

2 dated May 9, 2012, notifying the board
3 of a meeting on May 9, 2012, at
4 3:00 p.m., attached to which is a
5 several page analysis that was
6 presented at that meeting. Bates
7 numbers RC 9019_0093180 through 3183.

8 (9019 Exhibit 60, e-mail from
9 Gary Lee dated May 9, 2012, Bates RC
10 9019_0093180 through 3183, marked for
11 identification, as of this date.)

12 Q. Let me show you what we have
13 marked. Did you receive this e-mail and
14 the attachment from Mr. Lee on May 9,
15 2012?

16 MR. PRINCI: Just give me one
17 minute to read the document.

18 A. Yes.

19 Q. And Mr. Lee attached or sent his
20 e-mail at 2:38 p.m. on May 9th. Do you
21 see that?

22 A. Yes.

23 Q. And that was 22 minutes before
24 the scheduled meeting at 3:00 p.m., right?

25 A. Yes.

1 THOMAS MARANO

2 Q. Is that when you first received
3 the supporting materials he attached to
4 his e-mail?

5 A. I honestly couldn't tell you but
6 I'm sure I got them at that time.

7 Q. Okay. Were any other written
8 materials besides the ones attached as
9 part of this exhibit provided to the board
10 in advance of the meeting?

11 A. Not that I can recall.

12 Q. Were you and other members of
13 the board told before the May 9th meeting
14 the terms of the proposed settlement with
15 Ms. Patrick?

16 A. My recollection was that the
17 discussion with Ms. Patrick was fluid up
18 until the board meeting. And so I
19 can't -- I can't recall, you know, if --
20 you know, it was just fluid. It was
21 ongoing. We were apprised periodically.
22 But it was a fluid negotiation.

23 Q. Wasn't the board being asked to
24 approve the settlement at the May 9th
25 meeting?

1 THOMAS MARANO

2 A. Yes.

3 Q. So my question is -- well, let
4 me see if I understood your answer. Are
5 you telling me that until the meeting was
6 actually held neither you nor the other
7 board members knew the terms that had been
8 negotiated and agreed upon in principal?

9 A. No, that's not what I'm saying.

10 Q. Okay. So my question is did you
11 know the terms of the negotiated deal
12 prior to the May 9th board meeting?

13 A. I was aware of the general
14 concepts. Negotiations were going down to
15 the wire. I don't know if it moved a
16 little bit between my prior knowledge and
17 the time of the board meeting. It was
18 extremely fluid.

19 Q. How much prior to the May 9th
20 meeting could you have been aware of the
21 final negotiated terms as fluid as you've
22 described the negotiations?

23 MR. PRINCI: Objection to form.

24 Q. What's the earliest you could
25 have been aware?

1 THOMAS MARANO

2 MR. PRINCI: Objection as to
3 form.

4 A. Well, I -- I knew there was some
5 level of negotiation going on back in
6 October.

7 Q. That wasn't my question. Since
8 you've testified that the negotiations
9 with Ms. Patrick were so fluid right up to
10 the May 9th meeting that you are not sure
11 when you found out about the terms that
12 were agreed upon, I'm trying to find out
13 what's the earliest possible time before
14 May 9th, given how fluid everything was
15 when you could have learned --

16 MR. PRINCI: Objection as to
17 form.

18 Q. -- what the terms were?

19 MR. PRINCI: Misstates his
20 testimony.

21 A. The earliest possible time would
22 have been within a few days or hours.

23 Q. Okay. Could have been as late
24 as a few hours before the meeting is what
25 you are saying?

1 THOMAS MARANO

2 A. Could very easily have been.

3 Q. Okay. Prior to the proposed
4 agreement with Ms. Patrick being presented
5 to the board for formal approval did you
6 authorize an agreement in principal on the
7 terms that were ultimately presented?

8 MR. PRINCI: Objection to form.

9 A. I was kept appraised of the
10 negotiations that were going on with
11 Ms. Patrick by Gary Lee and Tammy
12 Hamzephour. And I told them to keep
13 working on trying to get the best deal
14 possible.

15 Q. My question was prior to the
16 time the agreement was formally presented
17 to the board for approval, had you
18 authorized -- had you authorized an
19 agreement in principal on the terms that
20 were ultimately presented to the board?

21 MR. PRINCI: Objection as to
22 form.

23 A. I -- I don't think so. I
24 authorized negotiations.

25 Q. Okay. We have seen that as of

1 THOMAS MARANO

2 You can answer it.

3 A. I agree that's what page 73
4 says.

5 Q. So you understood as of May 9,
6 2012, that it had been publicly disclosed
7 that the estimated or the estimate of
8 reasonably possible losses over time
9 relating to the matters that were being
10 settled was 0 to \$4 billion?

11 MR. PRINCI: Objection.

12 Misstates the record.

13 MS. PATRICK: Same objection.

14 A. Give me the date you just used.

15 Q. I'm saying as of May 9th, you
16 knew that it had been publicly disclosed
17 on April 27 that the estimate of
18 reasonable -- reasonably possible losses
19 over time related to -- relating to
20 put-back claims or repurchase claims was 0
21 to \$4 billion?

22 A. That is correct.

23 Q. Okay. As of May 9, 2012,
24 exactly how many repurchase claims had
25 actually been asserted against ResCap by

1 THOMAS MARANO

2 any RMBS trust?

3 A. I can't recall the exact number
4 that had been asserted. I believe, you
5 know, there was an FHFA lawsuit.

6 Q. Is that a trust?

7 A. I don't know. Actually I can't
8 answer that question. I don't know.

9 Q. Isn't the answer 0?

10 A. I don't know.

11 Q. You don't know. Did you ever
12 ask anyone prior to the May 9th meeting at
13 which you were being asked to approve an
14 \$8.7 billion settlement whether anyone,
15 whether any trust or certificate holder
16 had actually sued ResCap for repurchase
17 obligations?

18 MR. PRINCI: Just don't include
19 counsel in the answer to that
20 question, please.

21 MR. KAUFMAN: That's a fact.

22 That's not a legal advice.

23 Q. Did anybody tell you that as a
24 fact that any lawsuit like that had been
25 filed?

1 THOMAS MARANO

2 A. Yeah. I don't -- I do not
3 believe -- I actually think he's right.
4 There had been no trust -- trustees that
5 filed suits.

6 Q. So as of May 9, what you were
7 settling you knew what you were settling
8 was threatened claims not real claims,
9 right?

10 MS. PATRICK: Objection to form.

11 A. On May 9th we knew that Kathy
12 had, Kathy Patrick had aggregated enough
13 investors to break the threshold at which
14 she could order the trustees to file a
15 claim. And that's why the scope of the
16 settlement was much larger than was in the
17 Q.

18 Q. Was it your understanding,
19 Mr. Marano, that whatever amount
20 Ms. Patrick had aggregated, her clients
21 actually had the right to order the
22 trustees to do something or did you
23 understand they could merely request that
24 the trustees do something?

25 A. My -- my understanding was that

1 THOMAS MARANO

2 A. I have to rely on the minutes.

3 I can't recall.

4 The minutes suggest that it was
5 held by telephone.

6 Q. Do the minutes accurately
7 reflect what occurred at the May 9th
8 meeting?

9 A. Yes.

10 Q. The minutes say that one of the
11 board's members, Mr. Ilany, was unable to
12 attend.

13 Why couldn't he attend?

14 A. I'm -- I don't know why he was
15 not there. I don't remember.

16 Q. The minutes also reflect that
17 two matters were addressed at the meeting,
18 the proposed RMBS settlements and the
19 Project Bounce update; is that correct?

20 A. Yes.

21 Q. How much time was devoted to
22 each of those matters?

23 A. There was, you know, there was a
24 considerable amount of time, you know,
25 dedicated to both matters. I can't tell

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2 you within the hour that the board meeting
3 transpired, whether it was 50/50; but
4 there was, you know, a fair amount of
5 time.

6 Q. The entire meeting, according to
7 the minutes, lasted an hour, correct?

8 A. Correct. I just can't tell you
9 whether it was 30 and 30. I don't recall.

10 Q. Is it your best recollection
11 that it was split approximately equally
12 between the two matters?

13 A. I don't recall how much time was
14 spent on each matter.

15 Q. In the next-to-last paragraph on
16 the first page, the minutes say that
17 during the discussion you requested that a
18 report with separate line items
19 identifying the different settlement
20 amounts be prepared to provide the board
21 with additional details on the
22 settlements.

23 Do you see that?

24 A. Yes.

25 Q. Why did you want that

1 THOMAS MARANO

2 information?

3 A. For purposes of clarity.

4 Q. Clarifying what?

5 A. To help to make sure the board
6 understood, you know, the components that
7 made up the rep and warrant and PLS
8 settlement.

9 Q. Was that report provided during
10 the course of the hour meeting?

11 A. I do not believe it was.

12 Q. Why didn't you adjourn the
13 meeting until you got the information you
14 were looking for?

15 A. I think -- my recollection of
16 this meeting is that we had enough of a
17 basis to determine whether or not the
18 settlement agreement was fair, and this
19 was just clarifying details.

20 Q. Was there a written presentation
21 that accompanied the May 9th meeting?

22 A. I don't recall if there was a
23 presentation.

24 Q. Wasn't it the two-page document
25 we looked at before that you got --

1 THOMAS MARANO

2 A. Oh, yes.

3 Q. -- just about 20 minutes before?

4 A. Yes. This is the same meeting.

5 Q. So that's the information that
6 the board was looking at, when it was
7 considering, on May 9th, whether to
8 approve the settlement?

9 A. That is -- that is correct.

10 Q. Was there anything other than
11 that two-page presentation the board was
12 looking at, when it was asked to consider
13 whether to approve the settlement?

14 A. Not that I recall.

15 Q. On the second page of the
16 minutes regarding the Project Bounce
17 update, it says that you and Mr. Nashelsky
18 briefed the board on the status of various
19 matters related to a potential ResCap
20 Chapter 11 filing, including but not
21 limited to the AFI settlement agreement.

22 Do you see that?

23 A. Yes.

24 Q. And that refers to the
25 settlement agreement between ResCap and

1 THOMAS MARANO

2 that counsel for the institutional
3 investors will have their fees paid by the
4 debtors?

5 MS. PATRICK: Objection to form.

6 MR. PRINCI: Objection to form.

7 A. Yeah. I believe that the fees
8 will be paid, yes.

9 Q. Do you have an understanding as
10 to the amount of those fees that would be
11 paid by the debtors?

12 A. I don't recall. And it may be
13 in the document. I just don't recall.

14 Q. Okay. When the -- I think you
15 previously discussed the May 9th board
16 meeting at which the settlement agreement
17 was considered. Was there any discussion
18 at that meeting regarding the payment of
19 the institutional investors' counsel fees?

20 A. I don't recall if that was a
21 matter of discussion at the board meeting.

22 Q. Okay. Have you or anyone else
23 on behalf of the debtors evaluated the
24 reasonableness of the fees that would be
25 paid to counsel to the institutional

1 THOMAS MARANO

2 investors pursuant to the settlement
3 agreement?

4 MS. PATRICK: Objection to form.

5 A. I have not looked at the
6 reasonableness. I'm not -- again, I don't
7 recall that I even knew what that number
8 was.

9 Q. Are you aware whether anyone on
10 behalf of the debtors has requested either
11 bills or time sheets from counsel to the
12 RMBS investors to substantiate fees that
13 will be paid to them under the settlement
14 agreement?

15 MR. PRINCI: Objection to form.

16 MS. PATRICK: Same objection.

17 A. I'm not the best person to
18 answer that. My chief financial officer
19 keeps track of all that information. If
20 we received it, he'll have it.

21 Q. Okay. Is that -- that's
22 Mr. Whitlinger?

23 A. Whitlinger.

24 Q. Okay. Whitlinger. I'm sorry.

25 Give me one moment.

1 THOMAS MARANO

2 Mr. Marano. You testified early that
3 Mr. Ilany and Mr. Mack were responsible
4 for the Ally ResCap negotiations, right,
5 and you also testified earlier that -- I'm
6 sorry the court reporter can't take down a
7 head nod. Is that yes or no?

8 A. Yes.

9 Q. You also testified earlier --
10 backup. You also testified earlier that
11 another group of people were responsible
12 for negotiations with Ms. Patrick and
13 Mr. Franklin's group; is that correct?

14 A. Yes.

15 Q. And who were those people
16 responsible for negotiations with
17 Ms. Patrick's group?

18 A. Tammy Hamzephour from general
19 counsel of ResCap and Gary Lee who was --
20 who was counsel to ResCap via Morrison &
21 Foerster.

22 Q. Anyone else responsible for
23 negotiations with Ms. Patrick?

24 A. In the early stages when
25 Ms. Patrick's letter first arrived Tim

1 THOMAS MARANO

2 Devine had been present but he did not
3 represent ResCap in that meeting.

4 Q. I understand but my question is
5 something different. I'm asking you
6 overall who was responsible for the
7 negotiations with Ms. Patrick?

8 A. Tammy and Gary Lee.

9 Q. Not Mr. Devine?

10 A. No. Not -- not on behalf of
11 ResCap, no.

12 Q. I understand but I'm not -- I'm
13 not making that distinction you are. So
14 let me ask my question. Who was
15 responsible for negotiating the RMBS
16 settlement with Ms. Patrick?

17 MR. PRINCI: Objection. Asked
18 and answered.

19 You can answer again.

20 A. Tim Devine was there. But Tammy
21 Hamzephour represented ResCap and Gary
22 Lee.

23 Q. And who did Mr. Devine
24 represent?

25 A. Mr. Devine was there as a

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THOMAS MARANO

representative of Ally I believe.

Q. So Mr. Devine represented Ally?

A. Yes.

Q. Did anyone else to your knowledge have significant involvement with the negotiations with Ms. Patrick?

A. Our risk team was involved, Jeff Cancelliere.

Q. Anyone else?

A. No.

Q. And Jeff Cancelliere, who did he work for?

A. He -- he worked for the risk group.

Q. I understand. Was that risk group with Ally or risk group with ResCap?

A. Within -- within ResCap.

Q. So he did not work for Ally?

A. Again, there was a period -- there was a period in 2012 where the roles of the various global functions began to disengage from Ally. For a period of time Jeff would have reported to Todd Cushman. At some point I believe Jeff would have